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AKERMAN SENTERFITT
P.O. BOX 3188
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In re Application of
Duclos
Application No.: 10/533,986
PCT No.: PCT/CA04/01628
Int. Filing Date: 03 September 2004
Priority Date: 05 September 2003
Attorney Docket No.: 789-89
For: Pendulum Actuated Gearing Mechanism And
Power Generation System Using Same

DECISION

This is in response to the correspondence filed on 04 December 2006 and 28 March 2007, which is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

This international application was filed on 03 September 2004, claimed an earliest priority date of 05 September 2003, and designated the United States. The International Bureau transmitted a copy of the published international application to the USPTO on 17 March 2005. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 05 March 2006. On 05 May 2005, applicant filed *inter alia* the basic national fee.

On 28 February 2006, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant, requiring the submission of an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b).

On 04 December 2006, applicant filed correspondence which included a declaration document.

On 29 January 2007, a Notice of Acceptance (Form PCT/DO/EO/903) was mailed to applicant, reflecting a date under 35 U.S.C. 371(c)(1), (2) and (4) of "12/04/2006." On the same date, a filing receipt was mailed to applicant, reflecting a "FILING or 371(c) DATE" of "12/04/2006."

DISCUSSION

Petitioner requests issuance of a corrected filing receipt and a corrected Notice of Acceptance on the basis that the "FILING or 371(c) DATE" of "12/04/2006" is incorrect. Review of the record reveals that the "Communication" filed on 04 December 2006 and signed by Atty. Steele was accompanied by "a copy of the Response to Notification of Missing Requirements filed on March 8, 2006, as well as the stamped return receipt postcard indicating that the Patent Office received our response on March 13, 2006." Inspection of said postcard receipt reveals that it is stamped as "Rec'd PCT/PTO 13 MAR 2006," that it bears an OIPE plug stamp with the same date, and that it itemizes *inter alia* a signed declaration. MPEP 503 states in part that

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Following the policy described at MPEP 503, the declaration filed on 04 December 2006 is being regarded as a copy of the declaration originally filed on 13 March 2006 and itemized on the postcard receipt. Inspection of the declaration reveals that it is suitable for purposes of compliance with 37 CFR 1.497(a) and (b). Accordingly, the date of completion of the requirements of 35 U.S.C. 371(c)(1), (2) and (4) was 13 March 2006. It is noted that the electronic records of the USPTO show that the \$65.00 surcharge under 37 CFR 1.492(h) was filed on 13 March 2006. Therefore, it would be appropriate to grant the requested relief. In view of this, the Notice of Acceptance mailed on 29 January 2007, and the filing receipt issued the same date, were issued in error, and both are hereby VACATED.

DECISION

The petition is GRANTED.

This application is being forwarded to the Office of Patent Application Processing for further processing, including the preparation and mailing of a Notice of Acceptance (Form PCT/DO/EO/903) and of a corrected filing receipt, both reflecting a date under 35 U.S.C. 371(c)(1), (2) and (4) of 13 March 2006.

/George Dombroske/
George Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459